

P-427/C-94-68 ORDER REQUIRING INTERCONNECTION, PROVISION OF SERVICE,  
AND INQUIRY INTO LINE CHARGES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint Filed by James  
Jacobs and a Complaint Filed by Clifford  
Fisher Against Sherburne County Rural  
Telephone Company

ISSUE DATE: August 2, 1994

DOCKET NO. P-427/C-94-68

ORDER REQUIRING INTERCONNECTION,  
PROVISION OF SERVICE, AND INQUIRY  
INTO LINE CHARGES

**PROCEDURAL HISTORY**

On December 9, 1993, James and Susan Jacobs filed a complaint with the Commission against Sherburne County Rural Telephone Company (SCRTC or the Company). Mr. Jacobs had placed premises cable from the protector of his old home to his new home and was being denied service at his new home.

On January 4, 1994, Mr. Clifford Fisher filed a complaint with the Commission against SCRTC. Mr. Fisher had placed cable from a new home to the street and SCRTC was refusing to connect with the cable to allow him to receive service.

On January 24, 1994, the Commission forwarded the complaints to the Minnesota Department of Public Service (the Department) for investigation.

On February 28, 1994, the Department filed a report.

On May 11, 1994, the Commission requested comment on the Department's report.

On May 26, 1994, the Commission received comments from the Jacobs and SCRTC.

On June 23, 1994, after notice to all parties, Commission Staff met with the complainants and SCRTC representatives at the Company's office in Big Lake, Minnesota.

On July 19, 1994, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. The Jacobs Complaint**

Mr. and Mrs. Jacobs' original service consisted of one business and one residence line to their farm in Big Lake. SCRTC brought both lines to the house, where a demarcation point was established. Mr. Jacobs then extended the business line from his house to a shop and a barn. Later, Mr. Jacobs extended his lines to a new home he built on his property. All this wire was on the customer's side of the demarcation line and, hence, customer premises wire.

Mr. Jacobs rented the old house and on February 2, 1994 the tenant asked SCRTC for telephone service in the tenant's name. The tenant requested disconnection approximately one week later. The tenant subsequently moved out of the old house.

Alerted to the potential change in occupancy of the old house, SCRTC informed Mr. Jacobs that if the old house were rented or sold the Company could not continue to provide service to Mr. Jacobs at his new house. SCRTC explained that its tariffs required a demarcation point at each home.

The Jacobs do not dispute that if they sell or rent the old house that a demarcation point for the new house will need to be established. However, the Jacobs do not agree with SCRTC that the demarcation point for the new house must or should be established *at* the new house. The Jacobs would prefer the demarcation point for the new house to be established on the side of a barn that they plan to build between the old house and the new house.

Despite these developments, there is no immediate dispute between the parties. At this time, Mr. Jacobs has no tenant in the old house and the Company has made it clear that as long as there is no resident in the old house it will continue to provide residence service to the new house on the cable that Mr. Jacobs installed from the old house to the new house. In light of these circumstances, the Commission will defer this complaint until the issue becomes more ripe for consideration. See Ordering Paragraph 3 on page 7 of this Order.

### **II. The Fisher Complaint**

#### **A. Facts**

Mr. Fisher at one time owned a substantial amount of property which he has since sold off to several homeowners. Last year, the Fishers built a new home for themselves on remaining property. Mr. Fisher paid a private contractor approximately \$430 to install a cable from the new house to a point near a proposed SCRTC pedestal.

SCRTC informed Mr. Fisher that it would not connect with his cable and provide telephone service to the new house from that point. The Company stated that it would not allow self-installation of cable because the Company is responsible for the maintenance and quality of service. The Company told Mr. Fisher that it would provide service only over cable installed by the Company. The Company stated that the cable installation charge would be \$1,600 plus taxes.

Mr. Fisher did not apply for service pending resolution of the demarcation point issue. However, in the course of this complaint he has made it clear that he would like to receive new service via connection with his cable at the point of the Company's proposed pedestal.

#### **B. Analysis**

SCRTC cited several grounds for its refusal to provide service to the Fishers using the cable which the Fishers laid from their new house to the edge of their property:

## 1. Tariff

SCRTC claimed that a demarcation point cannot be established without its consent. The Company cited the tariff provision which states:

[The] demarcation point is to be mutually agreeable to the Telephone Company and the subscriber....

Under the Company's view, this tariff language removes from the Commission the authority to determine the location of a demarcation point even if the parties (the telephone company and the subscriber) cannot agree on the location. Further, according to the Company, the tariff language requiring mutual agreement represents Commission precedent on this point. If the Commission wishes to depart from that precedent, it must explain why it is doing so.

The Commission does not agree with the Company's interpretation of the tariff. The Commission does not view the mutual agreement language as conferring absolute veto power on the Company on this question. Under the Company's view, a telephone company could withhold service from a prospective customer to compel the customer's acceptance of the company's choice of location and the customer would have no recourse. This is contrary to the intent of the tariff which seeks to promote cooperative decisionmaking between the telephone company and the customer regarding the location of the demarcation point.

The Company's interpretation is also legally impossible. The Commission has statutory authority under Minn. Stat. § 237.081 (1992) to investigate and resolve any question regarding telephone service provided by telephone companies under its jurisdiction. The Commission could not divest itself of that authority and responsibility by tariff even if it had wanted to.

However, it is clear that the Commission never intended to do so. In the Order which addressed the FCC's deregulation of the installation and maintenance of inside wiring and which required telephone companies to file demarcation point tariffs, the Commission affirmed its on-going authority to settle disputes regarding telephone service in general and with respect to demarcation points in particular.<sup>1</sup> The Commission specifically noted that disputes regarding the location of the demarcation point could be brought to the Commission through the current complaint process. Order at page 5.

## 2. FCC Regulations

In oral argument, SCRTC stated that FCC regulations required that the demarcation point be within 12 inches of the protector or within 12 inches of where the telephone wire enters the customer's home. According to the Company, location of the Fishers' demarcation point anywhere other than where the Company wants to locate it (on the side of the Fishers' new house) would violate the FCC regulation.

The Commission disagrees. The regulation in question states:

(a) Single unit installations. For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within 30 mc (12 inches) of the protector or, where there is no protector, within 30 cm (12 inches) of where the telephone wire enters the customer's premises. 47 CFR 68.3 (a).

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<sup>1</sup> In the Matter of the Deregulation of the Installation and Maintenance of Inside Wiring, Based on the Second Report and Order in FCC Docket 79-105 Released February 24, 1986, Docket No. P-999/CI-86-747, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REQUIRING FILINGS OR TO SHOW CAUSE (December 31, 1986).

Since the Company has indicated an intention to install a protector, the regulation simply requires that the demarcation point be within 12 inches of the protector. The regulation does *not* specify where the protector must be installed and the Commission has interpreted the regulation as allowing the Commission some flexibility in that regard. As the Commission noted in its December 31, 1986 Order in Docket No. P-999/CI-86-747:

The FCC stated that the demarcation point shall be located on the subscriber's side of the company's protector, *regardless of where this protector is located*. The intent of this, as stated by the FCC, is to allow *flexibility* to establish an appropriate demarcation point for all building types. (Emphasis added.) Order, at page 3.

The regulation clearly allows for discretion to be exercised in the placement of the protector and hence the location of the demarcation point.

### 3. REA Bulletins

SCRTC did not make REA Bulletins or any documents indicating their relevance a part of the record in this matter. In oral argument, SCRTC simply referred to the provisions of two Bulletins issued by the Rural Electrification Administration (REA). Based on the Company's discussion of these Bulletins, they do not appear to relate to the central issue in this matter, i.e. they do not appear to require that demarcation points must always be located at the entry of the subscriber's building.

### 4. Concern for Future Unforeseen Problems

SCRTC expressed great concern regarding problems that the Fishers' cable might potentially cause in the future. For example, the Company asserted that the cable may cross property

owned by third parties, possibly in violation of easement rights. The Company stated that it was impossible to determine the quality and condition of the cable and splices and noted that the underground obstacles encountered, if any, were unknown. The Company noted that innocent third parties (future owner/occupants of the affected dwellings) may encounter service problems due to the Fishers' cable. In sum, the Company stated:

...there is no telling what future hazards lie around the corner because of unsubstantiated cable quality, installation techniques and routing.

In the Commission's view, such speculations provide no basis for requiring the Fishers to accept the Company's desired demarcation point. In addition to having no basis in the record, these concerns exceed the Company's responsibilities once the cable is designated customer premises wire. If the demarcation point is established as requested by the Fishers (at the end of their cable), the cable becomes customer premises wire. As such, due to the deregulation of premises wire, it becomes the sole concern of its owner and the responsibilities attendant upon that wire will rest squarely and solely on the customer's shoulders.

The same concerns that the Company raises about the Fishers' cable, of course, apply to telephone wire *within* a building, wire which even the Company would acknowledge is beyond its control, responsibility, and concern. In the Company's words, no telling what future hazards lie around the corner due to the installation and maintenance of that interior wire by parties other than a telephone company. However, just as it is clear that interior building wire is customer premises wire and no concern of any telephone company, so it is clear to the Commission that if it establishes the demarcation point at the end of the Fishers' cable, that is the point at which the telephone company's responsibility ends and the customer's begins.<sup>2</sup>

### **C. Commission Action Regarding the Fishers' Complaint**

Having considered this record, the arguments of the parties, and the circumstances of this case, the Commission finds that SCRTC's refusal to provide telephone service to the Fishers' new house using the Fisher's cable is unreasonable. Accordingly, the Commission will exercise its discretion under Minn. Stat. § 237.081 (1992) to resolve the Fishers' complaint in the following manner:

The Commission will establish the demarcation point in question at the pedestal that the Company proposed to install at the end of driveway leading to the Fishers' new home, i.e. Point B on the page 3 diagram the Commission Staff Briefing Papers for the Commission's July 19, 1994 meeting. The Company should locate its pedestal so that it can install its protector on the telephone company side of the demarcation point and interconnect with the Fishers' cable. With its new pedestal and protector in place, the Company will then interconnect with the Fishers' cable and begin providing telephone service to the Fishers over these facilities. All wire (cable and interior wire) on the Fishers' side of the demarcation point, of course, will be customer premises wire and the sole responsibility of the customer to maintain in working order. See Ordering Paragraphs 1 on page 7 of this Order.

### **III. Installation Charges**

A major factor motivating the complainants to install their own cable was that SCRTC's charges for installing similar cable are much higher than privately arranged installation. SCRTC provides up to 1000 feet without specific charge to the customer, although not more than 300 feet may be

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<sup>2</sup> Establishment of the demarcation point at a point near where the telephone line crosses the customer's property line is consistent with the Company's tariff which notes that the demarcation point "...is normally located near the point where the Telephone Company facilities enter the building *or property*...." (Emphasis added.)

classified as drop wire. Thereafter, the Company charges \$ .80 foot for laying extension cable. In support of their claim that the Company's rate is unreasonable, the Fishers indicated that they paid approximately \$430 to a private contractor to install the cable while SCRTC proposed to charge \$1600 plus taxes.<sup>3</sup>

A quick comparison of SCRTC's cable installation charges with some comparably sized telephone companies also suggests that the Company's installation charges may be unreasonable.

Company	Allowance	Charge beyond allowance
Bridge Water	1000 ft (300 drop)	\$100/100 ft (\$1/ft)
<b>SCRTC</b>	<b>1000 ft (300 drop)</b>	<b>\$80/100 ft (.80/ft)</b>
Lakedale	1000 ft (300 drop)	\$10/100 ft (.10/ft)
Home	1000 ft (300 drop)	10/100 ft (.10/ft)
Blue Earth	1000 ft (300 drop)	10/100 ft (.10/ft)
Callaway		Advance
Kasson Mantorville		No Charge

An inquiry into the reasonableness of SCRTC's installation charges is warranted. The Commission will direct the Company to file a cost study and market analysis to support its line installation charges within 30 days of this Order. Further, the Commission will require the Department to investigate the Company's line installation charges and file a report analyzing the cost study and market analysis and making recommendations with respect to the rate within 45 days of receipt of SCRTC's cost study and market analysis. See Ordering Paragraphs 4 and 5.

### **ORDER**

1. Upon receipt of this Order, Sherburne County Rural Telephone Company (SCRTC or the Company) shall connect its facilities with the Fishers' cable at the demarcation point identified in this Order (Point B on the page 3 diagram the Commission Staff Briefing Papers for the Commission's July 19, 1994 meeting) and begin providing telephone service to the Fishers over the joined facilities.
2. Within 10 days of this Order, the Company shall file a report its compliance with the provisions of Ordering Paragraph 1.
3. Consideration of the Jacobs' complaint is temporarily deferred.
4. Within 30 days of this Order, the Company shall file a cost study and market analysis to support its line installation charges.
5. Within 45 days of receipt of SCRTC's cost study and market analysis, the Minnesota Department of Public Service (the Department) shall investigate the Company's line installation charges and file a report analyzing the cost study and market analysis and making recommendations.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

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<sup>3</sup> The prices are not completely comparable. SCRTC pointed out that the Fishers used a cable of a smaller capacity than the Company would have placed.

Burl W. Haar  
Executive Secretary

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